

**KENTUCKY PERSONNEL BOARD  
MINUTES OF JULY 8, 2016**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chairman Larry Gillis on July 8, 2016, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

**Board Personnel Present:**

Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
Amanda Cloyd, Member  
Brian J. Crall, Member  
D. Brian Richmond, Member  
Mark O. Haines, Member  
Beverly H. Griffith  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Cynthia Perkins, Administrative Section Supervisor  
Gwendolyn McDonald, Administrative Specialist

**Swearing in of newly elected Board member**

New Board Member, Beverly H. Griffith, appointed by Governor Matthew G. Bevin, was sworn in. The oath of office was administered by Boyce A. Crocker, General Counsel. Chair Gillis introduced the Board members and staff.

**2. READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 14, 2016**

The minutes of the last Board meeting had been previously circulated among the members. Chair Gillis asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Ms. Cloyd seconded and the motion carried 6-0. The Board members signed the minutes.

(Vice Chair Gillis did not vote, unless noted.)

**3. EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek welcomed Ms. Griffith to the Board.

Mr. Sipek stated that Mr. Crocker was retiring at the end of the month. Mr. Sipek commended Mr. Crocker for his years of service with the Personnel Board, noting his knowledge of legal issues, state government and the ability to get things done.

Chair Gillis asked about the Board's website and getting it updated. Mr. Sipek stated that he spoke with representatives of Kentucky Interactive to get the Board's website updated, as what we have now will soon be obsolete. It was determined that we needed to confer with a manager, but have not been able to arrange a meeting. Mr. Sipek stated this matter is top on the Board's list and he hopes to have more information before the next Board meeting.

If Kentucky Interactive is not responsive, Mr. Crall stated to invite them to a meeting to report the status. Mr. Haines noted that the Board's Minutes are being posted.

At the conclusion of Mr. Sipek's report, Chair Gillis called for the Personnel Cabinet's report.

#### **4. PERSONNEL CABINET'S REPORT**

Secretary Thomas Stephens and the Hon. Lesley Bilby were present for the Personnel Cabinet's report.

Ms. Bilby stated that the Personnel Cabinet is in the process of reviewing all of the Kentucky Administrative Regulations, which some have not been reviewed since the '70s. Ms. Bilby stated the Cabinet looked over the Personnel Board's regulations and found some needed changes, which she would be glad to review with Mr. Sipek.

Ms. Bilby stated that the Cabinet has requested a dress code policy from all agencies which must be submitted by the end of the July. The Cabinet will work with the agencies to bring their policies up-to-date.

Secretary Stephens stated that every month the Cabinet addresses the Board. Secretary Stephens stated that he would like some feedback from the Board on issues the Personnel Cabinet can present. For example, the Commissioner from the Department of Insurance could explain how the self-funded system works.

Secretary Stephens said the Personnel Cabinet will begin reorganizing July 15, 2016. The last reorganization was in 2012. For instance, the Governmental Services Center (GSC), located at the Kentucky State University, has not had a Board meeting since 2013 and has ceased to exist. Based on that, the Office of Diversity and Equality will be merged with GSC and will be the Office of Diversity, Equality and Training. Secretary Stephens is interacting with the agencies to get feedback to see which training they need.

Secretary Stephens thanked Mr. Crocker for his service and praised him for his fairness as a Hearing Officer.

## 5. MOTIONS

- A. **Patrick Wise (2011-201) v. KET & Personnel Cabinet**  
--Motion for Attorney's Fees and Other Relief Allowing  
Patrick Wise and the Estate of Patrick Wise to be Made Whole  
--Personnel Cabinet's Response to Motion for Attorney Fees  
--KET's Response to Appellant's Motion for Attorney Fees

The Hon. Robin Cornette was present and withdrew her Motion for Attorney Fees, and the Board did not need to rule on it.

- B. **Mark A. Holt (2011-198) v. KET & Personnel Cabinet**  
--Motion for Extension of Time to File Appellant Mark Holt's Exceptions  
--Appellee KET Response to Appellant Holt's Motion for Extension of Time  
--Appellant's Marc Holt's Supplemental Memorandum in Support of  
Reversal of the Recommended Order (**Tendered**)

Mr. Sipek explained that the parties have 15 days to file exceptions from the date of the Recommended Order. Counsel for Appellant Holt filed some exceptions timely.

Ms. Cloyd moved to deny Appellant Holt's Motion for Extension of time to File Exceptions. Mr. Crall seconded and the motion carried 5-1, with Dr. Stevens opposing.

- C. **Megan Maynard v. Finance and Administration Cabinet (15-45)**  
--Appellant's Motion to Seal Record  
--Appellee's Response to Appellant's Motion to Seal

Mr. Sipek stated that the Appellant sent him an e-mail concerning sealing the record. Mr. Sipek treated her e-mail as a motion and the Appellee responded. Pursuant to KRS 18A.095(27), recommended orders are to be placed on the website, which would be a violation if the record was sealed.

Mr. Crall moved to deny Appellant's Motion to Seal Record. Dr. Stevens seconded and the motion carried 6-0.

## 6. ORAL ARGUMENTS

- A. **Mark A. Holt (2011-198), Robert A. Pickering (2011-200), Patrick Wise (2011-201), and Trasimond Soileau (2011-233) v. KET & Personnel Cabinet**

Present for oral arguments were counsel for Appellant Wise and Soileau, the Hon. Robin Cornette; counsel for Appellant Holt, the Hon. Ed Dove; and counsel for Appellee, the Hon. Brian Judy. After presenting oral arguments, the parties answered questions from the Board.

**B. Robert Johnson v. Cabinet for Health and Family Services (2015-282)**

Present for oral arguments were the Appellant, Robert Johnson, and counsel for Appellee, the Hon. Kathleen Hines. After presenting oral arguments, the parties answered questions from the Board.

**7. CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Cloyd seconded. Chair Gillis stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (12:25 p.m.)

Dr. Stevens moved to return to open session. Ms. Cloyd seconded and the motion carried 6-0. (1:20 p.m.)

**8. CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

**A. Mark A. Holt (2011-198), Robert A. Pickering (2011-200), Patrick Wise (2011-201), and Trasimond Soileau (2011-233) v. KET & Personnel Cabinet**

Mr. Richmond [having noted Appellant's exceptions (timely filed), Appellant's motion for extension of time to file exceptions (denied), and supplemental memorandum in support of reversal of the recommended order (tendered, not reviewed by the Board), KET's exceptions, KET's response to Appellant's exceptions, and oral arguments] moved to accept the recommended order dismissing Mark Holt's appeal. Dr. Stevens seconded and the motion carried 6-0.

Ms. Cloyd, having noted oral arguments, moved to accept the recommended order dismissing Robert Pickering's appeal. Ms. Griffith seconded and the motion carried 6-0.

Mr. Crall (having noted Appellant Soileau's exceptions, KET's response, Appellant Soileau's Response to KET's Exceptions, Appellant Soileau's Corrected and Supplemental Response to KET's Exceptions and oral arguments) moved to accept the recommended order sustaining to the extent of partial settlement as approved by the Board on March 13, 2015, and otherwise dismissed by recommended order dated May 3, 2016, of Trasimond Soileau's appeal. Ms. Cloyd seconded and the motion carried 5-1, with Mr. Richmond opposing.

Mr. Richmond [having noted Appellant Wise's exceptions, KET's response, Appellant Wise's Response to KET's Exceptions, Appellant Wise's Corrected and Supplemental Response to KET's Exceptions and oral arguments and Appellant's motion for attorney fees (withdrawn)] moved to accept the recommended order sustaining to the extent partial settlement as approved by the Board on March 13, 2015, and the recommended order dated May 3, 2016, Patrick Wise's (estate of) appeal. Ms. Griffith seconded and the motion carried 5-1, with Mr. Crall opposing.

**B. Robert Johnson v. Cabinet for Health and Family Services (2015-282)**

Mr. Crall, having noted Appellant's exceptions, Appellee's response and oral arguments, moved to accept the recommended order dismissing the appeal. Mr. Haines seconded and the motion carried 6-0.

**C. Gary Wise v. Education and Workforce Development Cabinet (2015-079)  
Deferred from June Board**

Mr. Crall, having noted Appellee's exceptions, Appellant's response and Appellant's corrected response, moved to accept the Final Order altering the recommended order, as attached to the minutes, dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

**D. Karey Cooper v. Cabinet for Health and Family Services (2015-288)**

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

**E. Jerry Foster, II v. Transportation Cabinet (2015-199)**

Mr. Crall moved to accept the recommended order dismissing the appeal. Ms. Cloyd seconded and the motion carried 6-0.

**F. Megan Maynard v. Finance and Administration Cabinet (2015-45)**

Mr. Richmond, with the Board having denied Appellant's motion to seal the record [KRS 18A.095(27)], moved to accept the Final Order as altered, as attached to the minutes, dismissing the appeal. Mr. Crall seconded and the motion carried 5-0, with Ms. Cloyd abstaining.

**G. Jessica L. Nichols v. Cabinet for Health and Family Services (2016-003)**

Mr. Crall moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

**H. Ronald C. Nunemaker v. Justice and Public Safety Cabinet/Corrections  
(Appeal Nos. 2015-219, 2015-258, 2015-268 and 2015-269)**

Mr. Crall moved to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 6-0.

**I. Walter R. Rafferty v. Justice and Public Safety Cabinet/Corrections  
(2015-298)**

Mr. Crall, having noted Appellant's exceptions and Appellee's response, moved to accept the recommended order dismissing the appeal. Mr. Richmond seconded and the motion carried 6-0.

**9. Show Cause Orders – Response Filed – Appeals Dismissed**

Dr. Stevens, having considered Appellant's responses, moved that the recommended order be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Cloyd seconded and the motion carried 6-0.

- A. Walter Ivey v. Kentucky Board of Nursing (2016-033)
- B. Walter Ivey v. Tourism, Arts and Heritage Cabinet, State Fair Board (2016-030)

**10. Show Cause Orders – No Response Filed – Appeals Dismissed**

Mr. Crall moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Dr. Stevens seconded and the motion carried 6-0.

- A. Neil Terry v. Cabinet for Health and Family Services (2016-53)
- B. Tezra M. Gause v. Cabinet for Health and Family Services (2016-006)

**11. WITHDRAWALS**

Mr. Richmond moved to accept the following withdrawal of appeals *en bloc* and to dismiss the appeals. Ms. Cloyd seconded and the motion carried 6-0.

- A. Camron Cafego v. Personnel Cabinet (2016-076)
- B. Adela Mrkulic v. Education and Workforce Development Cabinet (2016-100)

## 12. SETTLEMENTS

Mr. Haines moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Dr. Stevens seconded and the motion carried 6-0.

- A. Nathan Aseltine v. Department of Corrections (2016-022)
- B. Angela Wilkerson v. Department of Veterans Affairs (2016-085)
- C. James J. Etheridge v. Transportation Cabinet (2016-001)

## 13. OTHER

### Annual Increments for Executive Director and General Counsel

Mr. Sipek recommended that no annual increment be awarded to him, Executive Director, or Mr. Crocker, General Counsel, consistent with the budget for classified and unclassified employees.

Mr. Crall moved to accept Mr. Sipek's recommendation that no annual increment be awarded, consistent with the budget for classified and unclassified employees. Mr. Haines seconded and the motion carried 6-0.

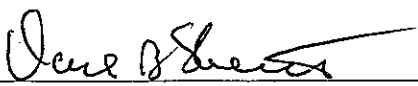
Dr. Stevens moved to commend Mr. Crocker and express gratitude for his exemplary service. Mr. Crall seconded and the motion carried 6-0.

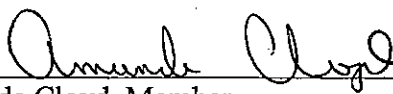
Mr. Crall wanted to add that, with Mr. Crocker's retirement, he contacted Mr. Sipek to determine where he was in his consideration, and would the Board need to be thinking of more than one replacement. Mr. Sipek stated that he would not be retiring for at least four years, if not longer, and that he was happy where he was and planned on staying.

Chair Gillis asked how the Board goes about hiring a General Counsel. Mr. Sipek stated that it has been twelve years since Mr. Crocker was hired, but the first step is to get approval to fill the position. It is up to the Board to decide how to proceed, as the statute states the Board hires the General Counsel. Mr. Gillis stated that interviews are conducted in closed session.

There being no further business, Dr. Stevens moved to adjourn. Ms. Cloyd seconded and the motion carried 6-0. (1:30 p.m.)

  
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Larry Gillis, Vice Chairman

  
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David B. Stevens, Member

  
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Amanda Cloyd, Member

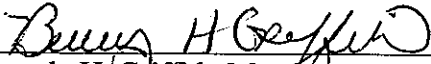
  
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Brian J. Crall, Member



D. Brian Richmond, Member



Mark O. Haines, Member



Beverly H. Griffith, Member



COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-079

GARY L. WISE

APPELLANT

VS.

FINAL ORDER ALTERING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

\* \* \* \* \*

The Board, at its regular July 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 25, 2016, Appellee's Exceptions, Appellant's Response to Exceptions, Appellant's Corrected Response to Exceptions and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Finding of Fact paragraph 7, and substitute the following:

7. The Board rejects the Hearing Officer's Findings that the evidence demonstrated Appellant performed the majority of the duties of the Workforce Development Manager, which were outside of his classification. Rather, the Board specifically relies on the testimony of Mr. James Lambert and his considerable expertise in performing desk audits in the Classification and Compensation Branch of the Personnel Cabinet in this regard. The Board adopts Mr. Lambert's testimony, and so finds as factual, that the Appellant's supervision of employees expanding from a

single office to four offices, was only an increase in volume and not a permanent, material change in duties, and as such would not justify reclassification.

B. **Delete** Conclusions of Law paragraphs 3, 4 and 5, and substitute the following:

3. The Board rejects the Hearing Officer's Conclusions of Law that Appellant suffered a permanent, material and substantial change in his duties when his period of detail ended. The Board concludes, as a matter of law, that Appellant did not suffer a penalization when his period of special duty ended.

4. The Board concurs with the Hearing Officer's Conclusions of Law that the Appellant's appeal was timely filed, and thus, the Appellee's Motion to Dismiss was properly **OVERRULED**.

C. **Delete** the Recommended Order and substitute the following:


**IT IS HEREBY ORDERED** that the appeal of **GARY L. WISE V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2015-079)** is **DISMISSED**.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, be and they hereby are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal is **DISMISSED**.

The parties shall take notice that is Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13<sup>th</sup> day of July, 2016.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK  
SECRETARY

A copy hereof this day mailed to:

Hon. Patrick Shirley

Hon. Tess Russell

Mr. Gary L. Wise

Hon. Rosemary Holbrook

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-045

MEGAN F. MAYNARD

APPELLANT

VS.                    **FINAL ORDER SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER AS ALTERED**

FINANCE AND ADMINISTRATION CABINET

APPELLEE

\* \* \* \* \*

The Board, at its regular July 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 9, 2016, Appellant's Motion to Seal, Appellee's Response to Appellant's Motion to Seal and being duly advised,

**IT IS HEREBY ORDERED** that the Appellant's Motion to Seal is **DENIED** pursuant to KRS 18A.095(27).

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:


A.     **Delete** Conclusions of Law paragraph 3.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, be and they hereby are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal is **DISMISSED**.

The parties shall take notice that is Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13<sup>th</sup> day of July, 2016.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK  
SECRETARY

A copy hereof this day mailed to:

Hon. Stephen G. Dickerson  
Hon. Katherine Fitzpatrick  
Ms. Megan F. Maynard  
Ms. Honor Barker